

**CALIFORNIA ENERGY COMMISSION**

**INITIAL STATEMENT OF REASONS**

**FOR PROPOSED AMENDMENTS TO  
CALIFORNIA CODE OF REGULATIONS, TITLE 20, DIVISION 2:**

**CHAPTER 3, ARTICLE 1 (QUARTERLY FUEL AND ENERGY REPORTS)  
AND  
CHAPTER 7, ARTICLE 2 (DISCLOSURE OF COMMISSION RECORDS)**

**Docket No. 97-DC&CR-1  
June 2000**

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**Introduction**

In this rulemaking the California Energy Commission is proposing to amend its regulations on the collection of energy data and on the confidentiality of Commission records.

The Commission is responsible for reporting on the economic and environmental effects of energy trends, forecasting future energy developments, licensing powerplants, supporting research and development activities, developing and implementing energy efficiency programs, supporting renewable and other alternative energy sources, and many other energy-related activities. (See Public Resources Code Sections 25000 et seq.) The Commission is the major energy policy entity in the state, and it makes recommendations directly to the Governor. (See *id.* Section 25309.2.)

In order to carry out its duties, the Commission must have a thorough collection of data on all aspects of energy production and use. For example, the Commission must have data on the historical consumption of electricity in order to forecast future trends and to assess the adequacy of current supplies. Indeed, the Legislature has designated the Commission as “a central repository within the state government for the collection, storage, retrieval, and dissemination of data and information on *all* forms of energy supply, demand, conservation, public safety, research, and related subjects.” (Public Resources Code Section 25216.5(d) (emphasis added).) Thus the Commission is directed to obtain “data and information . . . derived from *all* sources, including, but not limited to, electric and gas utilities, oil and other energy producing companies, institutions of higher education, private industry, public and private research laboratories, private individuals, and from *any other source* that the commission determines is necessary to carry out its objectives . . . .” (*Id.* (emphasis added).) To keep the Legislature, the Governor, and the public informed, the Commission must submit numerous reports on energy trends, including forecasts, environmental assessments, and reliability analyses.

(Public Resources Code Sections 25305, 25308, 25309, 25309.3(c), 25310, 25310.2, 25322, 25324, 25325, 25401, 25401.1, 25401.2, 25403, 25403.5, 25602, 25604.)

The Commission adopted its first data collection regulations more than twenty-five years ago. (History note, California Code of Regulations, Title 20, Section 1301. All further section references are to Title 20 of the California Code of Regulations, unless otherwise noted.) The Commission's data regulations, in Chapter 3 of Title 20, now cover the submittal of five types of data in periodic (e.g., quarterly, annual) reports:

Article 1: Energy production and sales data collected from electricity and natural gas producers, transmitters, and sellers.

Article 2: Surveys of consumer use, and forecasts of future demand, collected from electricity and natural gas utilities.

Article 3: Petroleum production and refinery data, collected from oil companies.

Article 4: Data on wind electricity generators.

Article 5: The disclosure by sellers to consumers of the types of fuel sources (e.g., nuclear, geothermal, wind) used to generate electricity.

The Commission's extensive databases are relied upon daily by thousands of businesses, governmental agencies, and individuals. Without the data collected by the Commission it would be virtually impossible to assess energy trends and problems and to identify solutions.

The Commission also has regulations dealing with the confidentiality of data. (Sections 2501 – 2510.) Some of the data collected by the Commission – for example, trade secrets of proprietary value to businesses, or data on individual persons and businesses -- should not be publicly disclosed. The Commission's confidentiality regulations implement the provisions of the Public Records Act (Government Code Sections 6250 et seq.) and describe the circumstances under which Commission data may be withheld and disclosed. Of relevance to this rulemaking proceeding are the provisions that (1) specify certain types of data, including data collected from electricity and natural gas suppliers, that are to receive automatic confidential designation because of their sensitive nature, and (2) allow the disclosure of confidential data if the data is masked or aggregated to prevent the discovery of the identity of characteristics of individual customers. (Sections 2505(a)(5)(B)1. - 2505(a)(5)(B)4.)

**The current rulemaking concerns only Articles 1 and 2 of Chapter 3, and associated confidentiality regulations.** Moreover, the rulemaking is divided into two parts. This ISOR and its associated NOPA and Express Terms cover Article 1 and associated amendments to the confidentiality regulations. In a few months the Commission will submit a NOPA for Article 2 and additional confidentiality amendments.

## **Historical Background and General Purpose of the Proposed Amendments**

### **Data Collection**

This rulemaking is being undertaken largely in response to major changes in the structure and regulation of energy markets, particularly the electricity market, that have taken place in the past several years. Until recently the electricity market was primarily composed of large investor-owned utilities (such as PG&E) and governmental utilities (such as SMUD) that had two key features:

The generation (powerplants), transmission (high-voltage lines), and distribution (local lines) of electricity were vertically integrated in each utility.

The utilities were monopolies with regulated rates; there was no competition for any utility services.

Beginning in 1992 the Federal Energy Regulatory Commission (FERC) issued a series of orders that directed utilities to revise their transmission access practices to enable much greater utilization of the transmission network by non-utility generators. In 1996, California enacted major electricity restructuring legislation (AB 1890, Chapter 854, Statutes of 1996) that went several steps farther by creating both a competitive generation industry and opportunities for non-utility electric marketers to sell directly to retail customers. As a result, there have been major changes in the scope and regulation of the investor-owned utilities in California, and the formation of numerous new organizations that provide electricity services to customers. Thus at the current time the electricity market, at least for the investor-owned utilities (IOUs) that serve 70 percent of California's customers, looks like this:

Generation has been "unbundled" from transmission and distribution, and it is now competitive. The IOUs have sold many of their powerplants to independent generators, and new plants are being proposed almost exclusively by non-utility entities. Anyone can sell the basic electricity commodity to consumers, and many electricity marketers have begun to conduct activities formerly limited to the monopoly utilities. Prices for the

electricity commodity are not regulated -- as opposed to rates for transmission and distribution, which remain regulated.

Transmission remains a monopoly function, but the operation of the IOU grid has been given to the non-profit, state-chartered Independent System Operator (ISO).

Distribution is the only function that looks generally as it did before industry restructuring. The IOUs continue their regulated monopoly functions here.

For many of the governmental utilities, similar changes are not far behind.

The consequences of these changes for the Commission's data collection practices are substantial. First, the entities that formerly collected much of the data on electricity (and also natural gas) and provided it to the Commission -- that is, the vertically-integrated utilities -- no longer have responsibilities that justify such requirements. For example, the IOUs now own few powerplants, so they cannot readily be a source of accurate information about electricity generation. Second, new entities operating in the industry are better able to, and can with less expense, collect and deliver electricity data to the Commission. For example, entities that sell electricity to end-users can more readily provide data about the amount of electricity that they sell than can the utilities that operate the distribution system. Finally, electricity restructuring has resulted in an increasing reliance on natural gas as a powerplant fuel, which in turn has strengthened the link between electricity and natural gas markets. This means that both electricity and natural gas data collection changes are necessary.

Several years ago the Commission recognized that the changes in industry structure required it to reexamine its needs for data, review what entities should provide data to the Commission, and revise its regulations to relieve data reporting burdens in some instances and institute data reporting activities in others. In the summer of 1997 the Commission initiated an investigation that involved representatives from all types of participants in the electricity and natural gas markets. Following numerous and extensive public discussions, in 1999 the Commission published its *Report on Generator & Consumer Data Reporting Requirements* (Commission Publication Number P300-99-007, hereafter *Data Report*)<sup>1</sup>. The *Data Report* contains:

the policy justifications for the Commission's analytic activities that require detailed electricity and natural gas data;

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<sup>1</sup> The *Data Report* was previously mailed to all participants in the proceeding and is available on request to the Commission's contact person for the rulemaking: Richard Rohrer, 1516 Ninth Street, Mail Station 22, Sacramento, California 95814-5512, telephone 916-654-4899, fax 916-654-4901, e-mail RRohrer@energy.state.ca.us.

the roles and responsibilities of various categories of industry participants;

the split of data processing burdens between reporting entities and the Commission staff;

confidentiality concerns in light of the greater reliance upon competitive forces; and

opportunities to harmonize Commission data reporting requirements with those previously established by the federal Energy Information Administration (EIA) (see, e.g., 63 Federal Register 1960 (January 13, 1998)).

In the *Data Report* the Commission attempted to strike a balance among the interests of all the participants. The Report provides the basic framework for the specific changes in data collection and reporting requirements set forth in the proposed regulations, and it was relied upon in the Commission's preparation of the Express Terms and this ISOR.

The data proposed to be collected by the amended data collection regulations is crucial to ensuring the success of the newly-restructured electricity industry. Without the data it will be nearly impossible for state government -- and market participants -- to monitor trends, assess new factors, analyze the adequacy of energy supplies, maintain fair competition, support energy efficiency and renewable alternatives, and foster low energy costs for businesses and individuals.

### Confidentiality

The Commission's confidentiality regulations implement the California Public Records Act, Government Code Section 6250 et seq. The Public Records Act establishes a general rule that records kept by agencies such as the Commission be disclosed; however, the Act also describes numerous categories of records that agencies are allowed to, or must, keep confidential. The Commission's regulations establish a process whereby persons submitting records to the Commission may obtain confidential treatment if they demonstrate that the Public Records Act authorizes the Commission to withhold the records from public disclosure. As part of the process, the regulations also establish several categories of data that automatically receive confidential treatment under the Act. The regulations also state that records receiving confidential treatment may be disclosed if the data is aggregated to a level that individual people or businesses, or their characteristics, cannot be identified from the aggregate data.

The data collection amendments discussed above would add new categories of data to be reported, and add new reporting entities. In addition, the shift from a monopoly to a competitive electricity generation market means that there are now new businesses with proprietary information. Both of these factors create a need to (1) provide automatic confidentiality to additional classes of data and (2) establish more thorough and detailed rules for the disclosure of aggregated data.

### **Impacts on Businesses**

In developing the proposed amendments the Commission was especially cognizant of the need to avoid undue burdens on businesses, especially small businesses. After all, one of the basic purpose of the restructuring of the electricity industry was to increase competition, and placing undue burdens on the business community would be incompatible with that goal. Thus the Commission has attempted, wherever possible, to reduce reporting burdens. Nevertheless, in order to ensure that the electricity and natural gas markets operate in a truly competitive manner, it is necessary for a certain amount of data to be collected, including data from new entities that have not previously participated in the markets. The Commission believes that the reporting requirements in the proposed regulations are the minimum necessary to ensure that the Commission has the data necessary to carry out its legislatively-mandated functions.

Most of the entities covered by the proposed amendments are large companies – electric utilities, interstate pipeline companies, and so on. In developing the *Data Report* the Commission attempted to contact all potential participants in the California electricity and natural gas markets that might be covered by data reporting requirements. The Commission will continue those efforts in this rulemaking.

### **Three General Categories of Changes**

Some of the proposed amendments make major changes or additions to the current regulations, while others make no substantive change at all. In descending order of the magnitude of changes, there are three basic categories:

Electric Utility, Electric Retailer, Control Area Operator, and General (Sections 1302 – 1306): The *Data Report* extensively discusses the nature of the changes in Sections 1302, 1304, and 1306. In general, the *Data Report* says little about the matters in Sections 1303 and 1305, although it emphasizes the need to minimize reporting burdens. Section



1303 is a compilation of procedural provisions (some of which exist, in a less clear form, in the current regulations); the amendments are designed to ease reporting burdens. Section 1305 is completely new; it adds reporting requirements for control areas, which are in effect a new participant in the restructured electricity market.

Confidentiality (Sections 2501 – 2511): These changes follow directly upon the other proposed amendments; they grant automatic confidential status to specified data in order to protect proprietary business information as well as private data on individuals, and they specify rules for release of aggregated data.

Natural Gas (Sections 1307-1310): The natural gas amendments, which were not extensively discussed in the *Data Report*, mainly provide clarification and re-organization of the current regulations.

### **Factors Applicable to All Sections**

Several of the APA's requirements for ISORs call for the same general response for each section of the proposed data collection amendments. To save space and the reader's time, we address those matters here. Where additional information is appropriate, it is presented under the appropriate individual section.

### **Studies, Reports, and Documents Relied On**

The Commission relied on the *Data Report*, which is discussed above and which resulted from an extensive public process involving all affected stakeholders, in developing the proposed regulations. All public comments will be considered during the course of the rulemaking and before any adoption of final regulations.

### **Alternatives and Reasons for Rejection, Including Alternatives to Lessen Impacts on Small Businesses**

The public process that culminated in the *Data Report* considered many potential alternatives for data collection: what data should be collected, who should provide it, and so on. As we noted above, the Commission intends and believes that the proposed regulations impose the smallest burdens possible, and it looks forward to stakeholder suggestions that may achieve even greater reductions in reporting burdens while still meeting the legitimate data needs of the Commission, market participants, and the public.

## Efforts to Avoid Unnecessary Duplication with Federal Regulations

The Commission scrupulously examined federal requirements in the field of energy data. The proposed regulations are in many instances entirely consistent with federal requirements; they differ only where California-specific conditions (for example, California's new electricity market structure) require different or additional data. In many cases reporting businesses will be able to submit the same forms to the Commission that they submit to the EIA or to other federal agencies. Differences exist primarily where EIA does not collect data that is as detailed as the Commission needs.

### **Section-by-Section Analysis**

#### **Amendments to the Data Collection Regulations (Sections 1301 – 1310)**

##### **Section 1301. Title**

There is no substantive change proposed to Section 1301.

##### **Section 1302. Definitions**

Circumstances Addressed: Section 1302(a) establishes rules of construction that will make the regulations easier to understand and to use. Section 1302(b) contains definitions. There are many new terms in the proposed amendments. In order to make the regulations clear, the Commission must define terms that are susceptible to different interpretations or that may be unfamiliar to those who have to comply with the regulations.

Purpose and Rationale: The purpose of the proposed action is to amend the definition of terms in the regulations. Some amendments delete the terms no longer used in the regulations, while others add new terms added in the regulations. Without the amended definitions the regulations would be unclear.

##### **Section 1303. General Rules for All Reports**

Circumstances Addressed: The current regulations have general substantive and procedural requirements scattered in various sections that are not easy to use. In addition, the current regulations do not provide businesses with alternative means of complying with the Commission's requirements that could save time and money.

Rationales:

1. Consolidation and Ease of Use. The proposed regulations deal with reports submitted by several different entities. There are general requirements, both substantive and procedural, that are applicable to all reports. Section 1303 brings together in one place all of the requirements that are generally applicable, which will make the regulations easier to use.

2. Alternatives to Reduce Burdens. The proposed regulations allow businesses to submit previously-prepared reports, or reports prepared for other government entities, to the Commission in fulfillment of the Commission's reporting requirements. This proposal will substantially reduce burdens on reporting entities.

Purposes:

Section 1303(a) states expressly that each of the reports described in the subsequent sections of Article 1 must be submitted. It provides the context for the rest of Section 1303.

Section 1303(b) provides that the Commission's Executive Director may designate the format (but not, of course, the substance) of the data reports. This allows for consistency in reporting and ease of analysis.

Sections 1303(c), (d), and (e) categorize reports into three types -- "monthly," "quarterly," and "annual" -- and explain the contents and deadlines for each.

Sections 1303(f), (g), (h), (i), and (k) all provide ways in which the time and expense necessary to comply with the proposed regulations can be reduced. Section 1303(f) provides for an extension of reporting deadlines when the reporting business has good reason for not being able to meet a deadline specified in the regulations. Section 1303(g) allows a reporting entity to delegate the submittal of data. It contains special rules for electricity and natural gas retailers that are necessary to ensure that the delegated entity is capable of complying with the regulations. Sections 1303(h) and (i) provide compliance alternatives to businesses: the submittal of reports previously prepared for the Commission or for other entities. Submittal of such alternatives reduces duplication and redundancy, and saves businesses time and money. Section 1303(k) allows a reporting entity to package multiple reports under a single cover.

Section 1303(j) states that parents, subsidiaries, and affiliates must submit separate reports for their respective activities. This is necessary to ensure that data is both complete and non-overlapping.

Section 1303(l) contains general requirements for all reports, such as the name and address of the reporting company and the time period that the report covers. Putting all of the general requirements in one place eliminates the necessity of repeating them in many subsequent sections.

Section 1303(m) deals with the accuracy of “NAICS coding.” NAICS -- the North American Industry Classification System published by the federal Office of Management and Budget -- classifies every type of industrial and commercial activity by a numerical code. For example, 532111 is Passenger Car Rental, 453110 is Florists, and 334611 is Software Reproducing. NAICS coding, and its predecessor, SIC (Standard Industrial Classification system) coding, is the universally-accepted method of organizing data about economic activity, and it is used by millions of businesses and governmental entities worldwide. Sections 1306(a)(1)(A) and 1307(a)(1)(A) of the proposed regulations require electricity and natural gas retailers to submit sales data categorized by NAICS code. The accuracy of the coding is crucial to the Commission's forecasting and analytic activities, and thus Section 1303(m) imposes a requirement for accuracy. The Commission recognizes that achieving 100 percent accuracy would be unduly burdensome, and therefore Section 1303(m) establishes a criterion that accounts for the realities of the business world while still ensuring sufficient accuracy for the Commission's purposes.

## **Section 1304. Electric Power Plant Reports**

Circumstances Addressed: The current regulations rely upon the utilities to report the majority of data on power plants. The restructuring of the electricity industry caused dramatic changes in the ownership of existing and proposed power plants so it is no longer appropriate or feasible to continue the reliance upon the utilities.

Purpose and Rationales: The Commission seeks to collect the necessary data while implementing the principle of requiring entities of equivalent functions to report equivalent data. The amendments are necessary so that the Commission can continue the collection of generation and fuel use data needed to perform its energy information and analysis functions. The current regulations require that utilities report *monthly* data for numerous power plants in the *aggregate*, while at the same time requiring that some non-utility power plants report *annual* data for *individual* plants. The utilities' reports are becoming less meaningful, not all non-utility power plants are required to report, and there is a mismatch between the data from the two sources. The proposed regulations require that all owners of power plants report the same data. However, in order to reduce reporting burdens while still collecting adequate data, power plants with less than one megawatt of capacity will not be required to report, and power plants with less than ten megawatts of

capacity will be required to report only annually, versus the quarterly reports of monthly data required of the larger power plants.

### **Section 1305. Control Area Reports**

Circumstances Addressed. The current regulations rely upon the utilities to report the purchase and sales of electricity from different regions. With many utilities joining the integrated grid of the California Independent System Operator and purchasing electricity from newly established power markets, it is no longer appropriate or feasible to continue the reliance upon the utilities to report the data.

Purposes and Rationales: The amendments are necessary so that the Commission can continue the collection of electricity import and export data needed to perform its energy information and analysis functions. Before the restructuring of the electricity industry, most utilities operated their own control areas. With the ISO now operating a large integrated control area that covers most of the state, many utilities are no longer the control area operators. Therefore it is no longer appropriate to require individual utilities to report the data. Instead, each control area operator, of which there are only four (Imperial Irrigation District, Los Angeles Department of Water and Power, PacifiCorp, and Sierra Pacific Power Company) in addition to the ISO, is now a reporting entity.

### **Section 1306. Electric Retailer Reports and NAICS Coding by UDCs**

Circumstances Addressed: Restructuring of the electricity market has resulted in major changes not only in electricity supply but also in the demand-side, or consumption, aspects of the market. In the regulated monopoly environment, utilities were the only agents supplying electricity to customers. With restructuring, new entities have emerged as retail suppliers and correspondingly have become a source for data on electricity consumption for their retail sales.

Purposes and Rationale: The amendments are necessary to ensure that electricity sales and revenue data for all customers in California is still collected so that the Commission can perform its energy analysis and trends work.

Section 1306(a) requires all electric retailers to provide sales data to the Commission. Requiring all retailers, whether a utility or another entity, to provide consumption data on sales to customers ensures that the Commission will continue to receive complete data on electricity sales in the state. Although the federal EIA has authority to collect data from both

distributors and retailers, EIA does not collect data at the level of detail (e.g., by NAICS code, by county) required by the Commission.

Section 1306(b) requires all electric retailers to provide good-faith estimates of their average commodity price. The current regulations require electric utilities to provide revenue data, which was then used to calculate average prices. Because restructuring has created new entities with sales to, and revenue from, customers, the collection of revenue data is now problematic. First, non-utility retailers are not regulated by the CPUC and are hesitant about sharing pricing information. Second, firms selling both electricity and other services have asserted that it may be difficult to separate revenues. In light of these problems the amendments requires retailers to provide only an *estimate* of the commodity price. The use of an estimate addresses the concerns about the release of sensitive pricing information and the difficulty of separating revenue streams.

Section 1306(c) requires each utility that provides distribution wire services to provide the Commission with the names and sales of all retailers selling electricity to customers in its service area. This information is needed to create a valid control total against which the detailed sales reports from individual retailers can be compared.

Section 1306(c) also requires each UDC to provide each retailer with the NAICS codes of the retailers' customers in the UDC's service area; in turn, retailers report data to the Commission classified by NAICS code. Because the UDCs, in their role as distribution companies, have contact with all customers, it is appropriate for them to continue this function as they do under the current regulations.

In developing the amendments, the Commission applied the "equivalent function" principle, which means that all retailers of electricity should be required to submit equivalent information on electricity sales.

Alternatives Identified to Lessen Impacts on Businesses: In developing the amendments, the Commission has included three items that lessen the business impacts. First, instead of requiring parties to provide electricity prices based on complicated accounting-based calculations, the Commission is allowing retailers to provide good-faith estimates of electricity prices. Second, instead of requiring retailers to incur the costs of assigning NAICS codes to its customers, the Commission would require UDCs to continue to assign NAICS codes to all customers in its service area and to provide NAICS code information to the retailers. Third, the Commission is providing a compliance option that permits UDCs to file electricity sales data as an agent for ESPs.

## **Section 1307. Natural Gas Retailer Reports and NAICS Coding by LDCs**

This section is the natural gas equivalent of Section 1306 and the discussion above for Section 1306 is applicable to Section 1307 (note that natural gas distribution utilities are referred to as “LDC’s” while electricity distribution utilities are referred to as “UDCs”).

## **Section 1308. Gas Utility Reports**

Circumstances Addressed: Proposed Section 1308 is a continuation of current Section 1304(b)(6) and (7). The new Section 1308(a) through (d) spell out in detail what is to be reported, while the current provisions that are being deleted left it to forms and instructions for specifying what was to be reported.

Purposes and Rationales: The amendments are necessary to ensure that natural gas receipts, deliveries, and transport revenues are still collected so that the Commission can perform its energy analysis and trends work.

Section 1308(a) requires all natural gas utilities to provide natural gas monthly supply receipt data to the Commission. In the past the utility only needed to report monthly the aggregated supply from each supply source. With the amendment, the natural gas utilities will be required to report by specific receipt points their supply receipts from each supply source. The changing structure and operation of the California natural gas market necessitate this amendment. This information is used in assessing the natural gas market dynamics and for use in natural gas pipeline adequacy, supply and price forecasting analysis.

Section 1308(b) requires all natural gas utilities to provide natural gas monthly supply deliveries (“sendout”). The natural gas utility would report monthly to the Commission a summary of its deliveries to the identified end use sectors, and to other natural gas utilities or interstate pipelines. This data is used to track the change in natural gas seasonal demand by sector and in natural gas supply and price forecasting models.

Section 1308(c) requires all natural gas utilities to provide annual gas deliveries in various categories including NAICS code. The purpose of this requirement is twofold. First the Commission will be able to convert its natural gas price and demand forecasts by end use sector to a NAICS-based forecast, which helps in forecasting and in targeting energy efficiency and other programs to the areas where they are most needed. Secondly, the data collected would be compared with utility-wide summaries of natural gas retailer reports to check for completeness of retailers’ filings.

Section 1308(d) requires the natural gas utilities to provide their annual delivery revenues by NAICS code and classified by the residential, core and

noncore cogeneration, and core and noncore noncogeneration sectors. This data in association with the volumes to be reported in Section 1308(c) provides the transportation cost to deliver natural gas to each end-use class.

Section 1308(d) is necessary because published natural gas utility tariffs (rate schedules) are not useful for determining the utility transportation rates. To be able to utilize the tariffs, considerably more data collection would be required. For example, commercial and industrial sector consumption by customer varies widely from being very small to being very large, but rates found in the tariff sheets for these sectors are based on size and not type of sector or NAICS code. Moreover, the natural gas utilities are not uniform in how commercial and industrial rates are applied. Since each natural gas utility is different, to apply each utilities' tariffs would require a unique data collection system for each natural gas utility. The bottom line is that it would be significantly easier for the each natural gas utility to submit its summary of the revenues collected for each NACIS code rather than all the other data necessary to apply the utility rates found in the tariff sheets.

It is important to have utility transportation rates because combining the delivery cost with the commodity cost reporting requirements in §1307 would provide the total price paid by the consumer. This allows the tracking of historical natural gas sector prices and forms a bench mark for assessing the reasonableness of forecasted end-use prices.

### **Section 1309. Interstate Pipeline Company Reports**

Circumstances Addressed: In the current regulations interstate pipelines are not required to report their activities to the Commission because when the current regulations were adopted their activities ended at the California border. However, in recent years, interstate natural gas pipeline companies have started operating within California to deliver natural gas directly to customers, retailers, and natural gas utilities. Besides the supply they transport to California from out-of-state sources, some also receive for delivery in California natural gas produced in California, gas from other interstate pipeline companies, and gas from natural gas utilities. Three interstate pipeline companies now make deliveries directly to end-users in California, bypassing the natural gas utility system. In 1998, this represented 12 percent of total natural gas consumption in to California. The gas utilities are not in a position to report the bypass volumes to the Commission, and none of these activities are currently required to be reported to the Commission.

Gas utility bypass by interstate pipelines will grow in the future. At least two more interstate pipelines are poised to directly enter the California market, and another interstate pipeline company, which is already operating in



California, is proposing both to expand its delivery capacity to California and to extend its pipeline deeper into the State.

Purposes and Rationales: Collection of interstate pipeline company flow information is necessary to complete the total natural gas supply and delivery picture for California. Without this data the Commission would not be able to assess the State's natural gas market dynamics, and it would have insufficient data for use in its natural gas supply and price forecasting models. The data will also be useful to double check information that the natural gas utilities submit on their receipts from interstate pipelines.

In Section 1309 (a) the interstate pipeline companies are required to report natural gas received from locations inside California by point of receipt. Reporting this data will insure that these supply receipts will not be double counted. This is a new reporting requirement to report volumes that are currently very small but that have the potential to grow with time.

In Section 1309 (b) the interstate pipeline companies are to report natural gas deliveries to California end-users. This requirement would cover 12 percent of the current natural gas interstate bypass deliveries in the state for which there are no Commission reporting regulations.

In Section 1309(c) interstate pipeline companies are required to report their deliveries to natural gas utilities and to other interstate pipeline companies by location. In order to have a thorough understanding of the market and to forecast accurately, the Commission needs this information by gas utility and interstate pipeline by receipt location. Section 1308(b) would require natural gas *utilities* to report deliveries they have to interstate pipelines. Obtaining the data both as pipeline receipts in Section 1309 (c) and as deliveries in Section 1308 (b) will provide a crosscheck to ensure proper reporting.

## **Section 1310. Natural Gas Processor Reports**

Circumstances Addressed: The Commission's current regulations for natural gas processors cover some products that now are not produced by processors, and some other products for which data is not needed.

Rationales and Purposes: The purpose of the amendments is to continue appropriate natural gas processor reporting requirements and eliminate requirements that are no longer necessary. As a result, seventeen product categories have been reduced to five. Secondly, the data collection requirements have been modified to conform as much as possible with present EIA reporting.

## **Amendments to the Confidentiality Regulations (Sections 2501 – 2510)**

### **Section 2503. Construction and Definitions**

Circumstances Addressed. The proposed substantive amendments to the confidentiality provisions in Sections 2505 and 2507 would add several new terms. The Commission is required to define terms that are susceptible to different interpretations by those who may be unfamiliar, or have to comply, with the regulations, in order to make the regulations clear.

Purposes and Rationales. The purpose of the proposed action is to add definitions of new terms. Without the new definitions the regulations would be unclear. The amendments to the confidentiality regulations expressly state some new definitions, but in order to prevent redundancy Section 2503 would also incorporate all of the definitions in Section 1302 of the data collection regulations.

### **Section 2505. Designation of Confidential Records**

Circumstances Addressed. There are several new categories of data required by the proposed data collection regulations, and several new reporting entities.

Rationales and Purposes. The amendments are necessary to provide automatic confidentiality designation to several new categories of information that would be required by the proposed data collection amendments in Sections 1301 – 1310, and to rescind automatic confidentiality designation to one existing category of data. Of the four categories of automatic confidentiality designation in the current regulations, two would be unaffected by the proposed amendments, while two would be revised substantially.

Section 2505(a)(5)(B)1 would be modified to provide different treatment to end-user customer sectors that have different needs for confidentiality. Subsection (a) would continue the same level of confidentiality for residential and commercial sector data that can be used to identify individuals. Subsection (b) would expand automatic confidentiality to all elements of industrial sector surveys. Subsection (c) would add automatic confidentiality protection to all information used to design a survey, because this data relies upon individual customer records or individual responses to draft questionnaires. These changes in automatic confidentiality designation are needed to ensure that closer Commission involvement in survey design activities that would result in the Commission having access to greater

amounts of data about individual end-use customers than previously was the case is conducted in the context of confidential treatment of all such data.

Section 2505(a)(5)(B)2 would ensure that all energy sales data provided by utilities, natural gas retailers, or electric service providers at the fully disaggregated level is automatically designated as confidential. This data is more sensitive than it used to be as a result of industry restructuring changes. Under the previous market structure only natural gas utilities and natural gas marketers could sell natural gas, and only electric utilities could sell electricity at the retail level. As a result of industry restructuring, a new class of retailer can sell electricity. The Commission now needs to modify its regulations to require all retailers to provide summaries of their retail sales data in a manner similar to what only utilities were required, or able, to provide in the past. However, disclosure of such data could harm their competitive interests. Similarly, restructuring of the natural gas industry has increased opportunities for retailers to provide natural gas and natural gas services at the retail level to consumers. In both electricity and natural gas industries, retailing is becoming an increasingly competitive activity with greater sensitivity about the volumes and customers each retailer is pursuing. Disclosure of such data in its fully disaggregated form can have negative financial consequences for these privately held firms.

Section 2505(a)(5)(B)3 would ensure that all energy commodity price data provided by utilities, natural gas marketers, or electric service providers is designated as confidential. Commodity price is the central feature of the competing products offered by retailers to end-users. Disclosure of the most detailed data required in Sections 1306(b) and 1307(b) could harm the competitive interests of these providers.

Sections 2505(a)(5)(B)4 would ensure that all fuel cost data provided by generators is designated as confidential. These data will be required from all generators whose powerplant capacity is 50 MW and larger by the proposed changes to Section 1304. Most utility powerplants have been sold to private entities and virtually all new powerplants proposed to be constructed in the near future are sponsored by non-utility entities. All of the important components of powerplant electricity production costs are publicly available -- except fuel cost data, which is the most important determinant of electricity prices. Since price is by far the most important factor customers consider, prices, and the components thereof such as fuel costs, are considered to be trade secrets by all powerplants operating in the California market.

In contrast to the other subsections of Section 2505 discussed above, Section 2505(a)(5)(B)8 would eliminate automatic confidentiality for a set of powerplant production and fuel use data so designated in the current regulations (existing Section 2505(a)(5)(B)). There is no longer a justification for confidentiality for that data: substantially the same data are reported by

generators to, and are publicly disclosed by, the EIA. Data publicly disclosed by another entity cannot be considered confidential under the California Public Records Act.

## **Section 2507. Disclosure of Confidential Records**

Circumstances Addressed. Section 2505, discussed above, would grant confidential status to several types of data. Nevertheless, that data is needed by governmental and private analysts to assess market trends and to make appropriate responses.

Rationales and Purposes. The purpose of the proposed action is to amend the requirements of Section 2507 so as to permit a degree of disclosure for various categories of data granted confidentiality protection in Section 2505. As we noted above, the increased reliance upon competitive industry structures justifies increased use of confidentiality to protect data that constitutes trade secrets, but the public interest in the data demands some degree of disclosure. The changes proposed to Sections 2507(c) and (d) result from the Commission's balancing of the competitive interests of reporting entities in having trade secrets protected, versus the public interest in the disclosure of aggregations of such data to facilitate planning and market monitoring, and reducing potential barriers to market entry.

The survey data provided to the Commission pursuant to existing Section 1344 is an important element for forecasting and for energy efficiency program evaluation and planning by providing the general characteristics of the electricity and natural gas end-user population against which changes from energy efficiency measures can be computed. The Commission proposes to add subsection (4)A and (4)B to Section 2507(c), to permit two categories of entities to have access to the confidential survey data received by the Commission. Section 2507(c)(4)A would authorize the Commission to provide full and complete survey data to energy efficiency program administrators for the limited purpose of program evaluation and planning. These program administrators have been selected to implement energy efficiency programs by the California Public Utilities Commission, and they are funded by the energy efficiency public good charge monies collected pursuant to Public Utilities Code Section 381. Section 2507(c)(4)B would authorize utilities that collaborate with the Commission in the design and implementation of an end-user survey to obtain the full and complete survey data for end-users within their service area that results from the project. This is a fair return for the financial contribution that these entities make to the financial requirements of the project. Much of the confidential data about such customers is already known to such a utility, since its development for a survey generally stems from the utility sharing customer usage and billing data for purposes of selecting a sample of end-users to be survey participants. For both categories of data, the

recipients would have to agree to maintain confidentiality and to disclose it only to employees or contractors whose work in the efficiency and survey activities requires access to the data.

Section 2507(d) would make several changes concerning the release of data that has been aggregated or masked.

Section 2507(d)(3) would address aggregations of generator fuel cost automatically designated confidential under Section 2505(a)(5)(B)4. Section 2507(d)(4) would address the masking of survey data designated confidential under Section 2505(a)(5)(B)1. Finally, Section 2507(d)(5) would describe the necessary aggregation of powerplant operating data and fuel prices that are automatically designated confidential under Section 2505(a)(6).

Current Section 2507(d)(1) would be replaced by new Sections 2507(d)(1) and (2), which address two aspects of energy consumption data that would be reported under Sections 1306 and 1307. Section 2507(d)(1) would be amended to replace the so-called “3/60 rule,” which establishes a general principle regarding the level of aggregation necessary to justify the release of confidential energy use data. Instead, the new Section 2507(d)(1) would specify exactly what level of aggregation is required for various types of energy use data; it would thus be much easier to understand and to use. In addition, it would permit greater geographic and economic activity disaggregation as the number of customers likely to be included within the disclosable data grows. For example, at the very limited end of the spectrum for an individual private retailer, only statewide data in four broad customer groupings is disclosable. On the other hand, for the sum of all retailers, consumption data may be disclosed for individual counties and for numerous individual industrial activity groupings as determined by the California Employment Development Department’s disclosure practices for employment and wage data.

Section 2507(d)(2) would authorize disclosure of the energy price data required by Sections 1306 and 1307 for each energy retailer. While the individual retailer price data is extremely sensitive, data about energy prices is also very valuable to end-users in making choices among competing providers and as well as to government to evaluate the degree of success of industry restructuring in reducing prices for energy. In weighing these interests, the Commission has determined that three broad groupings are appropriate for disclosure of prices for each of the four customer sectors: (1) the sum of all private retailers, (2) the sum of all utility retailers, and (3) the sum of all retailers. These data can serve as benchmarks for evaluating individual offers that a retailer might make to a specific end-user in a marketing activity or as broad indicators that government can track across time.

Section 2507(d)(3) would authorize disclosure of aggregated fuel cost data required by Section 1304(a)(2)(C). Fuel cost (and fuel price) which is calculated from fuel cost data by individual generators is extremely sensitive. However, data about fuel costs is required to monitor the market and assess trends in electric generation. In weighing these interests, the Commission has determined that fuel cost data may be disclosed if it is aggregated by generator technology type and region. Aggregate, but not individual, fuel cost data may be disclosed. For example, fuel costs for an individual generator may not be disclosed, but information about fuel costs for all generators in a utility service area may be disclosed.

Section 2507(d)(4) would authorize disclosure of data collected from customer surveys. The Commission has determined that different measures, depending on the major customer sector, are appropriate to prevent disclosure that might harm or identify an individual respondent. For the residential and commercial sectors, the Commission has determined that individual survey responses may be disclosed after the name, address, and other geographic identifiers have been removed. In addition the individual responses will be “masked” by adding error terms to weather, prices, and other variables to ensure that specific survey responses cannot be matched to an individual respondent. For the industrial sector, the Commission has determined that, because of the small number and unique characteristics of industrial customers, there is no level of masking that would ensure that individual industrial customer survey responses could not be matched to individual industrial customers. For this reason, the Commission has determined that no individual results from industrial surveys may be disclosed. Only aggregations and tabulations used in analytical reports may be disclosed.